

February 28, 2014

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

**VIA ECFS**

**Re: WC Docket Nos. 10-90 & 05-337  
Fremont Telcom Co. Petition for Waiver**

Dear Ms. Dortch:

Enclosed please find Fremont Telecom Co.'s Petition for Waiver in the above-captioned proceeding.

Sincerely,



Jason B. Williams  
Vice President – General Counsel  
Fremont Telcom Co.  
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406-541-5454  
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CC: Suzanne Yelen, Assistant Division Chief, Industry Analysis and Technology  
Division  
Craig Stroup, Economist, Industry Analysis and Technology Division

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	WC Docket No. 10-90
Connect America Fund	)	
	)	WC Docket No. 05-337
High-Cost Universal Service Fund	)	

**FREMONT TELCOM CO.'S PETITION FOR WAIVER**

Fremont Telcom Co. ("Fremont") hereby submits, pursuant to Section 1.3 of the Federal Communications Commission's ("Commission") rules, this Petition for Waiver to allow modification to a single input of the formula used to calculate Fremont's loop costs as shown in the *2014 Notice*.<sup>1</sup> The *2014 Notice* lists that Fremont has three local exchanges when, in fact, Fremont has four local exchanges. The effect of correcting the number of exchanges from three to four will be to reduce Fremont's high cost loop support calculation from "above the cap" to "below the cap." Blackfoot respectfully requests that the change be retroactive to January 1, 2014.

**I. Background**

Fremont is a rural, rate-of-return incumbent local exchange carrier ("ILEC") that provides local, long distance and high speed data services in southeastern Idaho. It is an Idaho corporation regulated by the Idaho Public Utilities Commission ("Idaho PUC").

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<sup>1</sup> See DA14-45, *Wireline Competition Bureau Releases High-Cost Loop Support Benchmarks for 2014*, rel. 2014 ("2014 Notice"). Throughout this pleading, reference to *2104 Notice* shall also include reference to the url link embedded within the public notice document.

On April 25, 2012, the Wireline Competition Bureau (“Bureau”) released the *HCLS Benchmarks Implementation Order*.<sup>2</sup> Among other things, the *HCLS Benchmarks Implementation Order* identified the methodology for establishing the limits or “benchmarks” for high cost loop support (“HCLS”) for rate-of-return ILECs. The *HCLS Benchmarks Implementation Order* also established parameters whereby ILECs could challenge the inputs used in establishing the benchmarks.<sup>3</sup> In 2013, the Commission released the *Sixth Order on Reconsideration*<sup>4</sup> which modified the *HCLS Benchmarks Implementation Order* by combining into a single cap the separate capital expense and operating expense caps for determining the benchmarks for rate-of-return carriers’ HCLS.

On January 31, 2013, a wholly owned subsidiary of Blackfoot Telephone Cooperative, Inc. (“Blackfoot”), a rate-of-return ILEC, acquired all of the stock of Fremont from a subsidiary of FairPoint Communications, a price cap carrier holding company. Prior to Blackfoot’s acquisition, Fremont was receiving Connect America Fund Phase I high cost universal service fund (“CAF Phase I”) support. Although Fremont is a rate-of-return regulated ILEC, since it was owned by a price cap holding company—i.e. FairPoint Communications—it was not eligible to receive rate-of-return high cost universal service support prior to Blackfoot’s acquisition.<sup>5</sup>

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<sup>2</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 27 FCC Rcd. 4235 (Wireline Comp. Bur. 2012) (“*HCLS Benchmarks Implementation Order*”).

<sup>3</sup> See, e.g. *HCLS Benchmarks Implementation Order* at 4247 (allowing carriers to file petitions for waivers where a carrier’s actual boundaries were different from the boundaries used by the Bureau in the benchmarks methodology).

<sup>4</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Sixth Order on Reconsideration and Memorandum Opinion and Order, 28 FCC Rcd 2572 (2013) (“*Sixth Order on Reconsideration*”).

<sup>5</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking (Nov. 18, 2011) (“*Transformation Order*”), 26 FCC Rcd. 17,663, 17,713 (describing how rate-of-return

After Blackfoot's acquisition, Fremont continued to receive CAF Phase I support throughout the remainder of 2013.<sup>6</sup> Effective January 1, 2014, Fremont began receiving "high cost universal service support as a rate-of-return carrier (not affiliated with a price cap carrier)."<sup>7</sup>

The *2014 Notice*, released on January 15, 2014, showed, for the first time, the HCLS benchmark amount for Fremont. As part of that calculation, the *2014 Notice* identified that Fremont had only three exchanges.

## **II. Petition for Waiver**

Fremont respectfully requests that the Commission, pursuant to Rule 1.3, grant Fremont a waiver of the deadline to request changes and corrections to the methodology used by the Bureau in creating the benchmarks as well as a waiver to correct the erroneous data used in calculating the HCLS benchmark for Fremont. Specifically, Fremont requests that the Bureau adjust the benchmark for Fremont such that the number of exchanges allocated to Fremont is corrected from three exchanges to four exchanges.

Generally, the Commission's rules may be waived if good cause is shown.<sup>8</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>9</sup> In addition the Commission may take into account considerations of hardship, equity or more effective implementation of

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operating companies that are affiliate with holding companies for which the majority of access lines are regulated under price caps shall receive high cost universal service support based on forward-looking costs rather than embedded costs).

<sup>6</sup> *Connect America Fund and High Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Order, July 26, 2013 ("Fremont Order"), 28 FCC Rcd. 10,999, 11,006

<sup>7</sup> *Id.*

<sup>8</sup> 47 C.F.R. § 1.3.

<sup>9</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

overall policy on an individual basis.<sup>10</sup> Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.<sup>11</sup>

Fremont has good cause to request this waiver. Specifically, the *2014 Notice* contains an error of fact—it states Fremont has three exchanges when in reality Fremont has four exchanges. The *2014 Notice* is the first time an HCLS benchmark for Fremont has been published because up until January 1, 2014, Fremont was not eligible to receive rate-of-return based HCLS. Thus, January 15, 2014, is the first time Fremont had knowledge of the number of local exchanges that was going to be used in calculating Fremont's benchmark. Given these unique facts and special circumstances, the Bureau should consider this Petition timely filed.

The public interest would be served by allowing Fremont to submit corrected data so that the inputs used in creating Fremont's benchmark are factually accurate. Notably, in the *HCLS Benchmarks Implementation Order*, the Bureau stated “when considering whether there are special circumstances and the public interest is served by granting a waiver of the benchmark methodology, we will be focusing on ensuring that accurate data is used to perform the necessary computations, regardless of the extent of support reduction.”<sup>12</sup> The relief requested in this Petition is exactly the type of “accurate data” that needs to be included to “perform the necessary computations” for Fremont as contemplated by the *HCLS Benchmarks Implementation Order*.

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<sup>10</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 116.

<sup>11</sup> *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 f.2d at 1166.

<sup>12</sup> *HCLS Benchmarks Implementation Order*, 27 FCC Rcd at 4247.

The fact that Fremont was originally considered a price cap carrier for universal service support purposes as a result of the *Transformation Order*, and then subsequently was converted back to rate-of-return for HCLS purposes effective January 1, 2014, is a unique, special circumstance which warrants approval of this Petition. Moreover, granting Fremont's Petition is equitable in that the result will be to correct a simple, factual error which will provide the Bureau with the correct, factual inputs in order to set Fremont's HCLS benchmark accurately.

In this instance, strict compliance with the *2014 Notice* is inconsistent with the public interest because the *2014 Notice* contains a misstatement of fact—i.e. it shows Fremont has three exchanges when in reality it has four exchanges. Attached as "Attachment 1" to this Petition are the relevant pages from Fremont's Local Exchange Tariff, on file and approved by the Idaho PUC, which states that Fremont has four exchanges: Ashton, Island Park, St. Anthony, and Teton. Because Fremont's most recent local exchange tariff was filed in September 2013, included in "Attachment 1" are the relevant tariff pages from Fremont's previously filed and approved local exchange tariff, dating back to 1996. This 1996 filing again shows Fremont has always had four local exchanges.

In addition, Fremont discovered that the National Exchange Carrier Association ("NECA") had incorrect information in its databases for Fremont's number of exchanges. Fremont has contacted NECA and has provided it with updated information, namely the fact that Fremont has always had four exchanges. NECA has correspondingly updated its rural carrier databases to reflect that Fremont has four exchanges.

The effect of the Bureau granting the relief requested in this Petition will not create undue hardship on any party. Currently, the *2014 Notice* shows that Fremont's Total Cost per Loop (\$974.12) exceeds the Summed Cap Per Loop amount (\$943.46). Correctly adjusting the input of total number of exchanges for Fremont from three to four will have the effect of reducing Fremont's calculated Total Cost per Loop to an amount beneath the Summed Cap per Loop amount. Fremont has done some initial computations and has determined that the net effect of this change will result in an increase to Fremont's HCLS of approximately \$44,000 in 2014. In comparison to the total HCLS fund of approximately \$900 million, this amount is extremely small. On balance, the benefits of treating Fremont equitably by calculating its HCLS based on correct inputs outweigh any harm to the several hundred carriers that may experience a minor decrease as a result of additional HCLS going to Fremont.

Lastly, Blackfoot respectfully requests that the change be effective retroactively to January 1, 2014, so that it is allocated the correct amount of HCLS as determined by using the accurate HCLS benchmark inputs.

### **III. Conclusion**

As demonstrated, Fremont has good cause to receive the relief requested in this Petition. The Bureau should grant its request for waiver to correct the number of exchanges from three to four for Fremont and use the corrected data in establishing Fremont's HCLS.


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Respectfully submitted this 28th day of February 2012.

Fremont Telcom Co.

By:   
Jason B. Williams  
Vice President – General Counsel



**ATTACHMENT 1**

**FREMONT TELECOM CO.**  
**I.P.U.C. No. 1**  
**Original Sheet No. 120**

**EXCHANGE MAPS**

The following exchange maps are attached to this tariff:

Ashton

Island Park

St. Anthony

Teton

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Issued Date: September 9, 2013

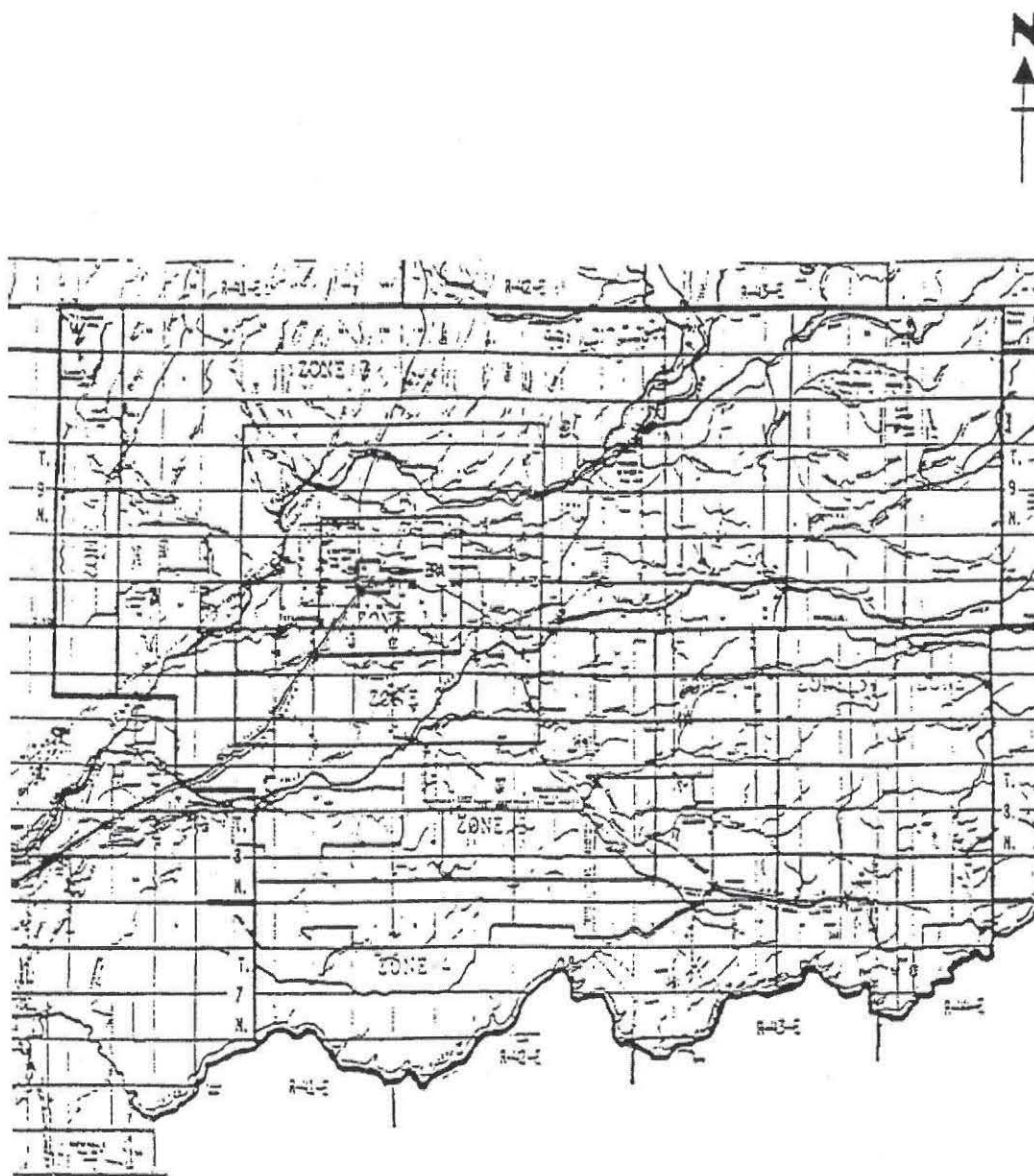
Effective Date: October 9, 2013

Issued by: Michelle Norbeck  
Fremont Telcom Co. dba Fremont Communications  
1221 N. Russell Street  
Missoula, MT 59808

Advice Letter: ID--13-04

ASHTON, IDAHO  
Exchange Area

REFERENCE  
Boundary of Exchange Area

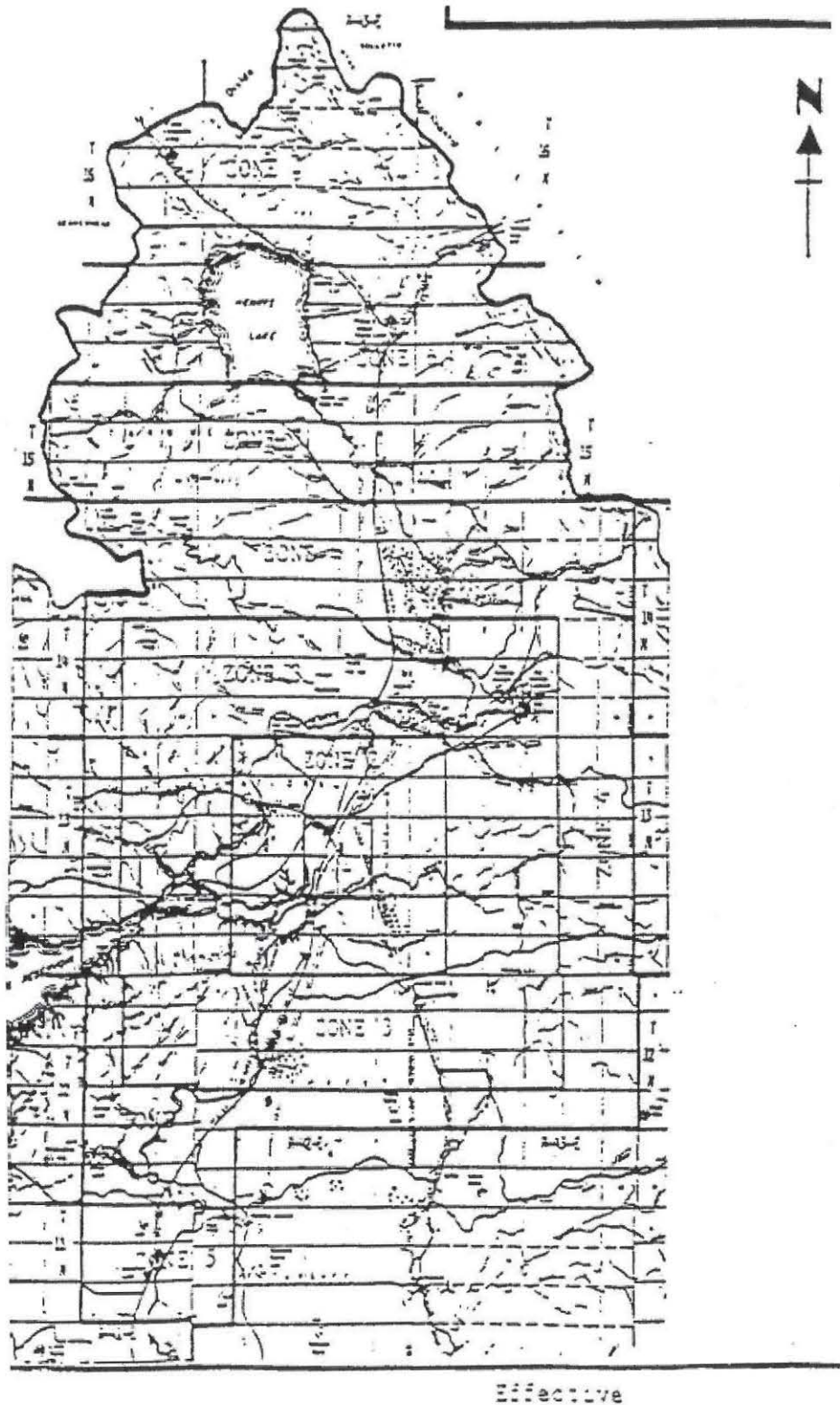


Issued Date: September 9, 2013

Effective Date: October 9, 2013

Issued by: Michelle Norbeck  
Fremont Telcom Co. dba Fremont Communications  
1221 N. Russell Street  
Missoula, MT 59808

Advice Letter: ID--13-04



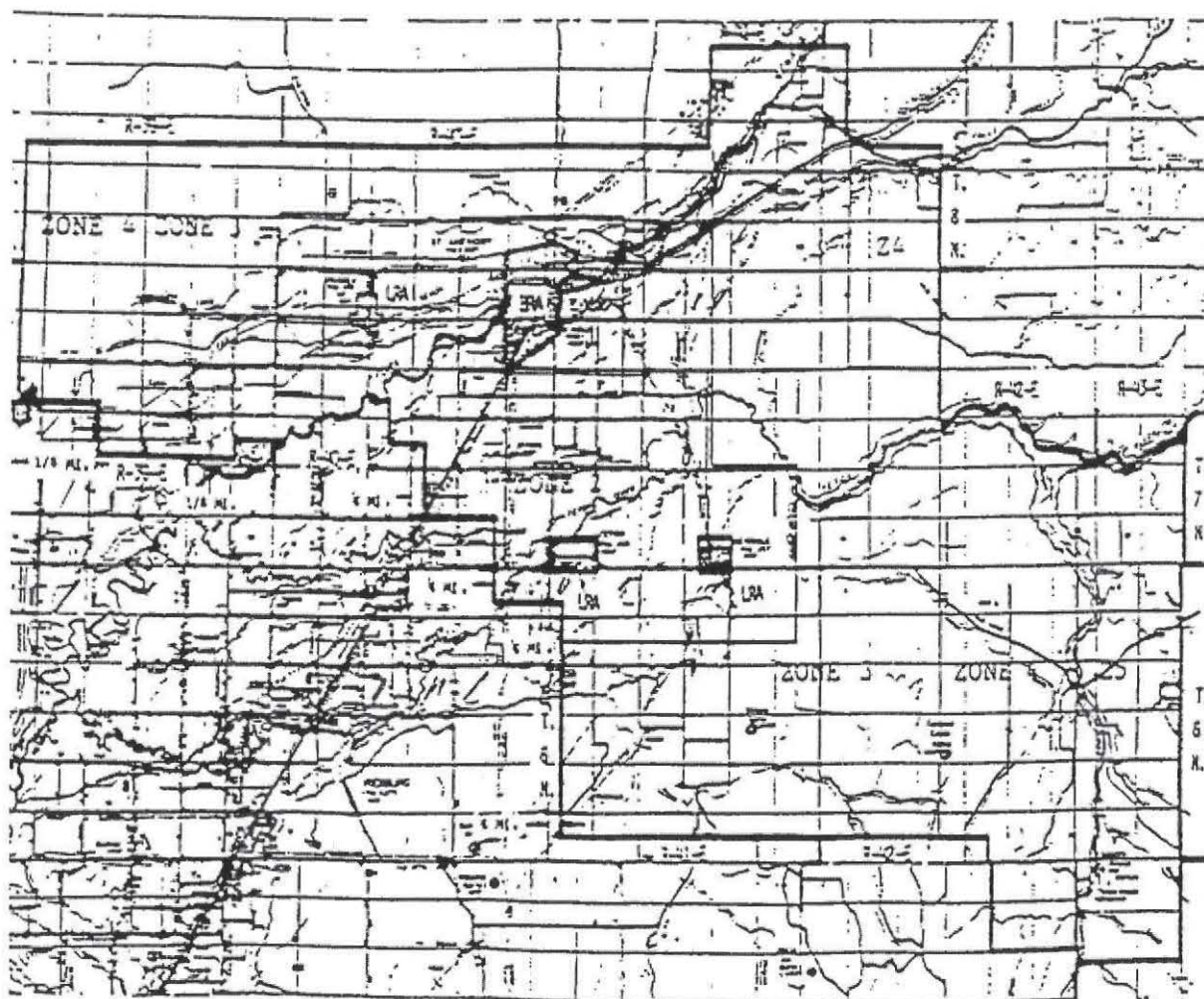
Issued Date: September 9, 2013

Effective Date: October 9, 2013

Issued by: Michelle Norbeck  
Fremont Telcom Co. dba Fremont Communications  
1221 N. Russell Street  
Missoula, MT 59808

Advice Letter: ID--13-04





Issued Date: September 9, 2013

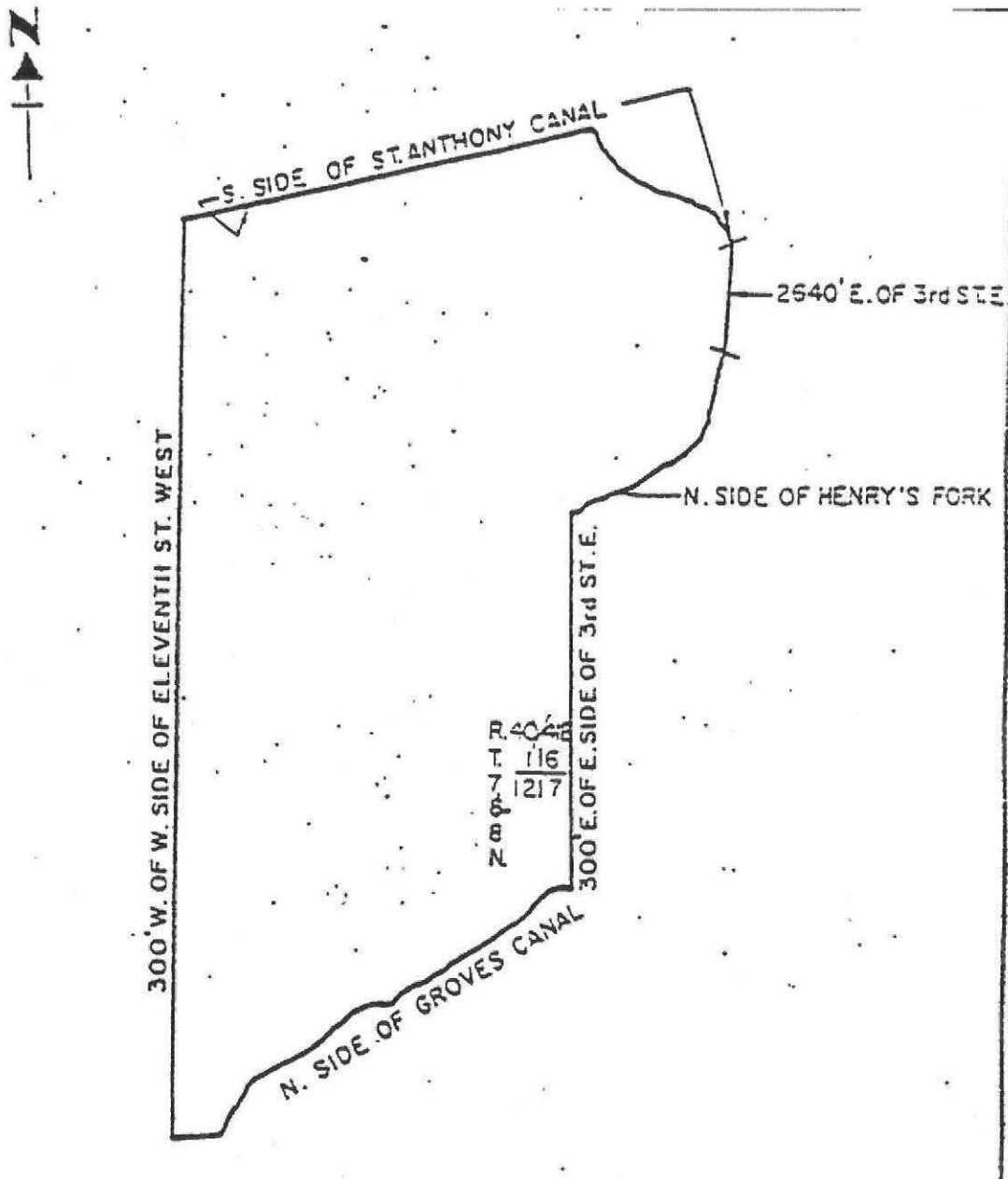
Effective Date: October 9, 2013

Issued by: Michelle Norbeck  
Fremont Telcom Co. dba Fremont Communications  
1221 N. Russell Street  
Missoula, MT 59808

Advice Letter: ID--13-04

ST. ANTHONY, IDAHO  
BASE RATE AREA

0 0.25 0.5  
SCALE IN MILES



Issued Date: September 9, 2013

Effective Date: October 9, 2013

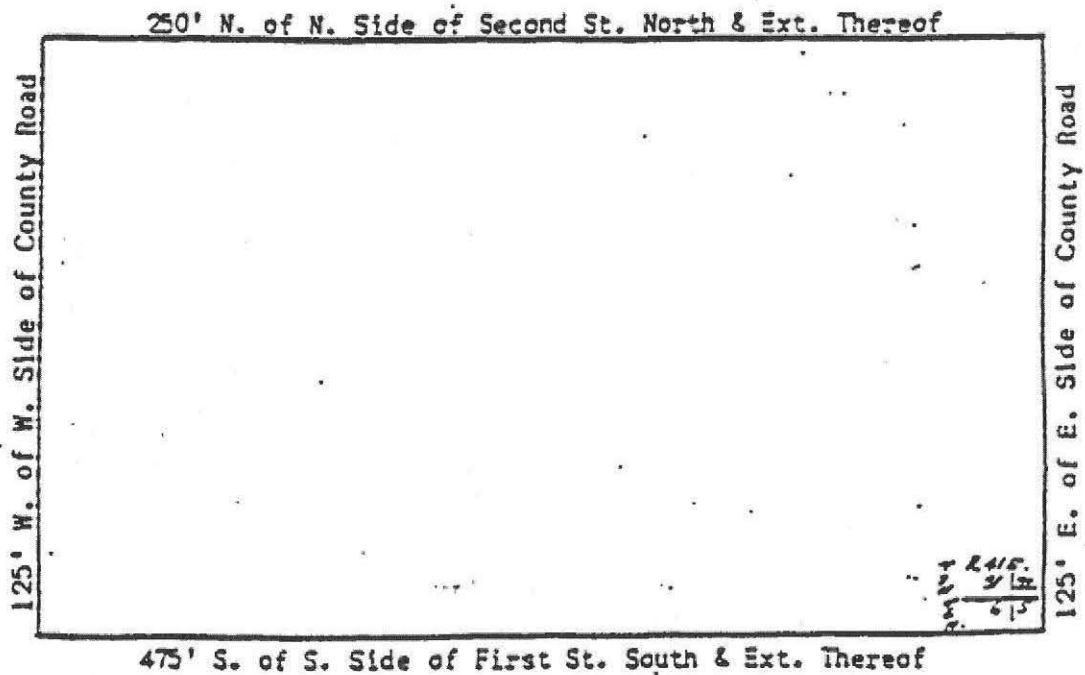
Issued by: Michelle Norbeck  
Fremont Telcom Co. dba Fremont Communications  
1221 N. Russell Street  
Missoula, MT 59808

Advice Letter: ID--13-04

ST. ANTHONY, IDAHO  
TETCH LOCALITY RATE AREA

*Reference*  
- Boundary of Locality Rate Area -

0' 300' 1000' 1500' 2000'  
Scale in Feet



Issued Date: September 9, 2013

Effective Date: October 9, 2013

Issued by: Michelle Norbeck  
Fremont Telcom Co. dba Fremont Communications  
1221 N. Russell Street  
Missoula, MT 59808

Advice Letter: ID--13-04

**FREMONT TELECOM CO.**

**I.P.U.C. No. 1**

**Original Sheet No. 120**

**Cancels Sheet No.**

EXCHANGE MAPS

IDAHO PUBLIC UTILITIES COMMISSION  
APPROVED EFFECTIVE

DEC 2 - '96

NOV 15 '96

*Myron J. Stalder* SECRETARY

The following exchange maps are attached to this tariff:

Ashton

Island Park

St. Anthony

Teton

ISSUED: 11-15-96

EFFECTIVE: 11-15-96



ASHTON, IDAHO  
EXCHANGE AREA

IDAHO PUBLIC UTILITIES COMMISSION  
APPROVED EFFECTIVE

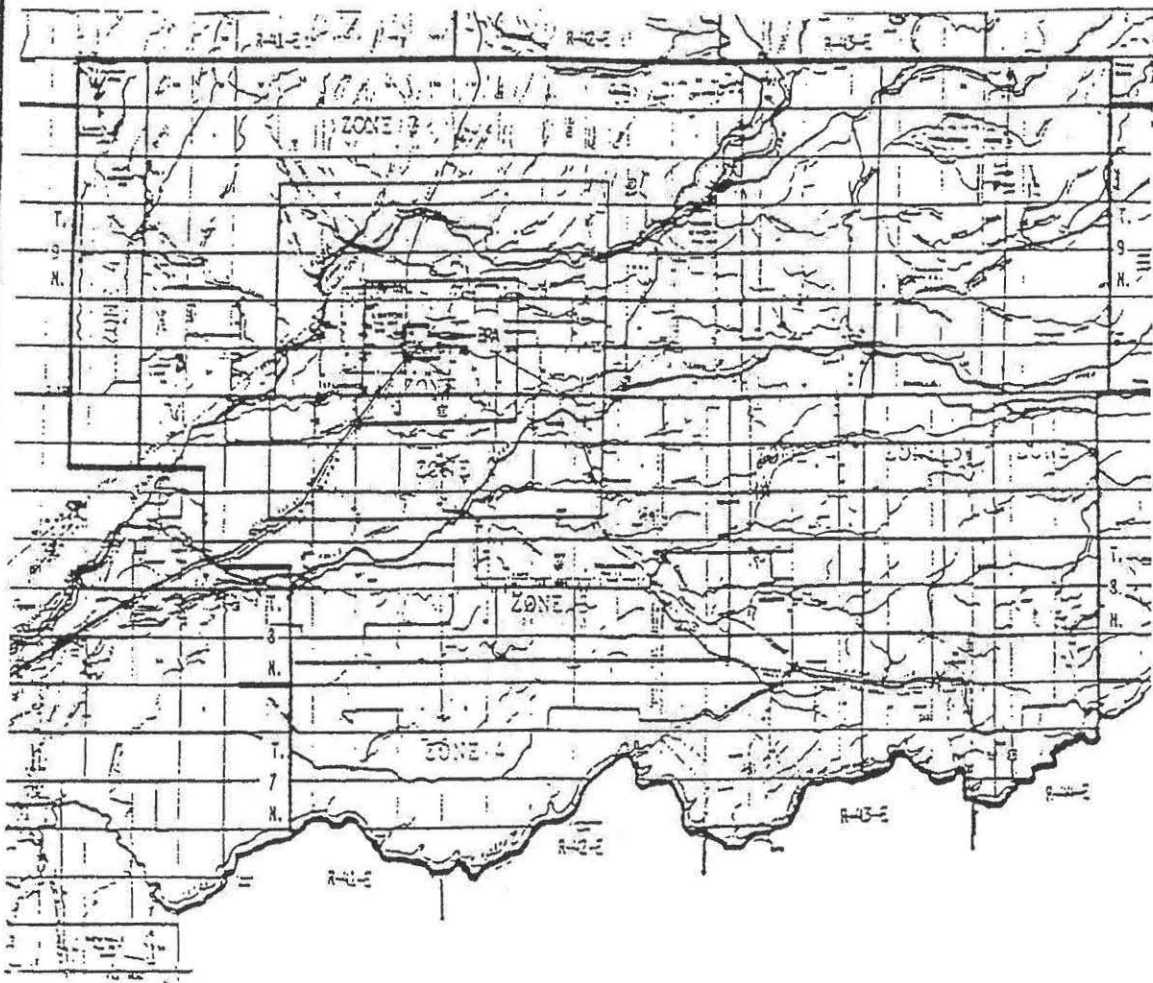
DEC 2 - '96

NOV 15 '96

REFERENCE

— Boundary of Exchange Area

*Theresa E. Stalder* SECRETARY



Issued:

Effective:

ISLAND PARK, IDAHO  
EXCHANGE AREA

IDAHO PUBLIC UTILITIES COMMISSION  
APPROVED EFFECTIVE

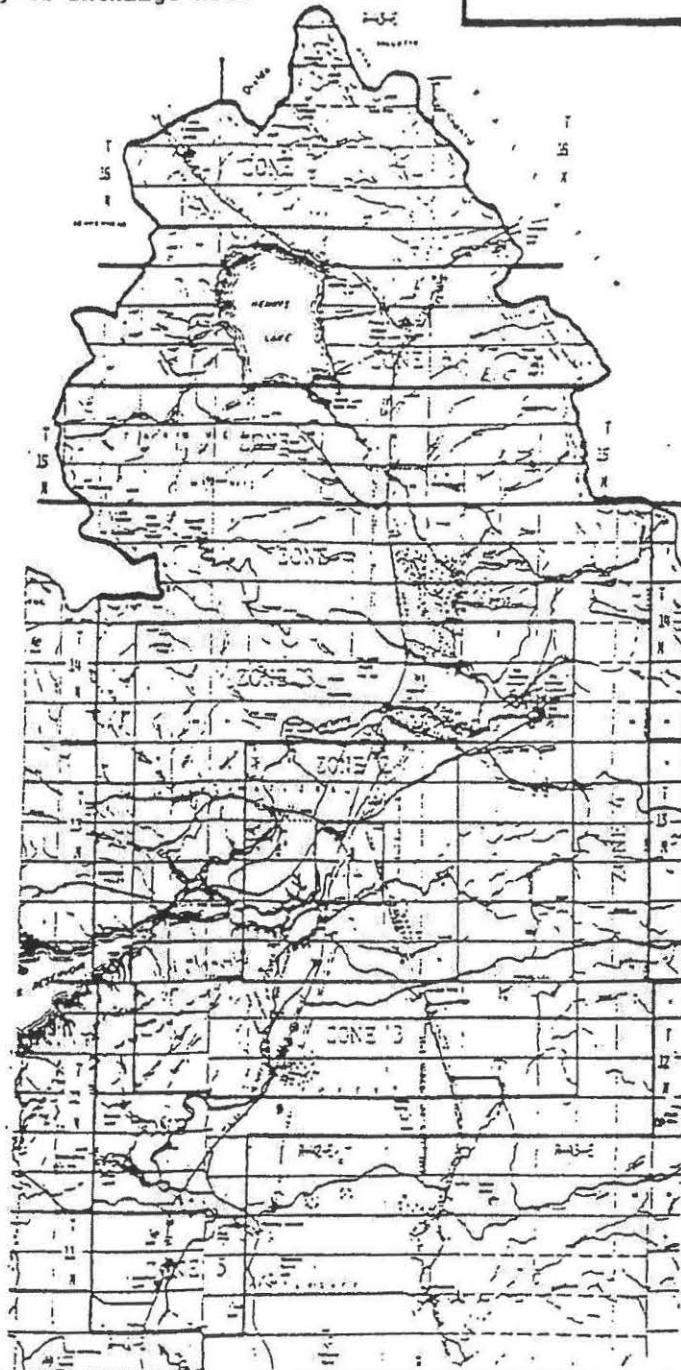
DEC 2 - '96

NOV 15 '96

REFERENCE

— Boundary of Exchange Area

*Theresa J. Stalder* SECRETARY



Issued

Effective

ST. ANTHONY, IDAHO  
EXCHANGE AREA

IDAHO PUBLIC UTILITIES COMMISSION  
APPROVED EFFECTIVE

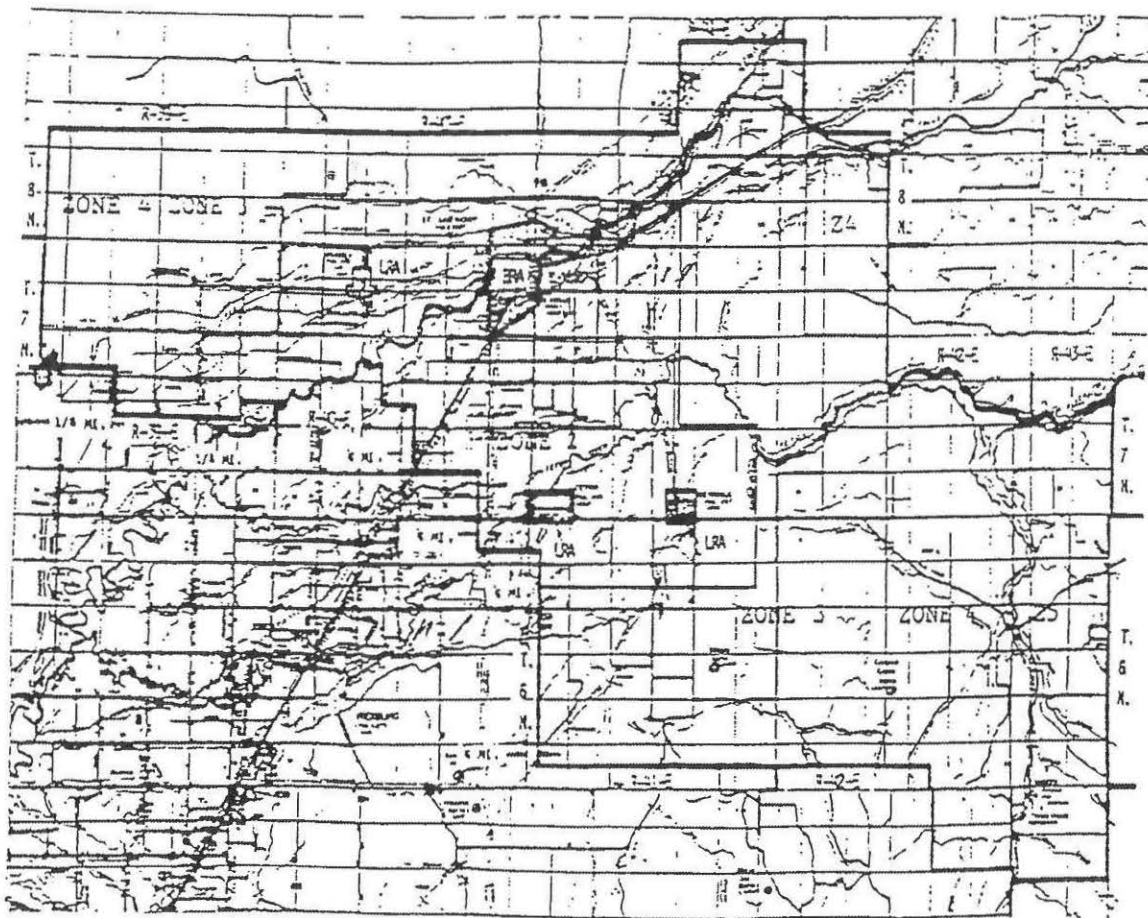
DEC 2 - '96

NOV 15 '96

REFERENCE

— Boundary of Exchange Area

*Theresa L. Stalter* SECRETARY



Issued:

Effective:



ST. ANTHONY, IDAHO  
BASE RATE AREA

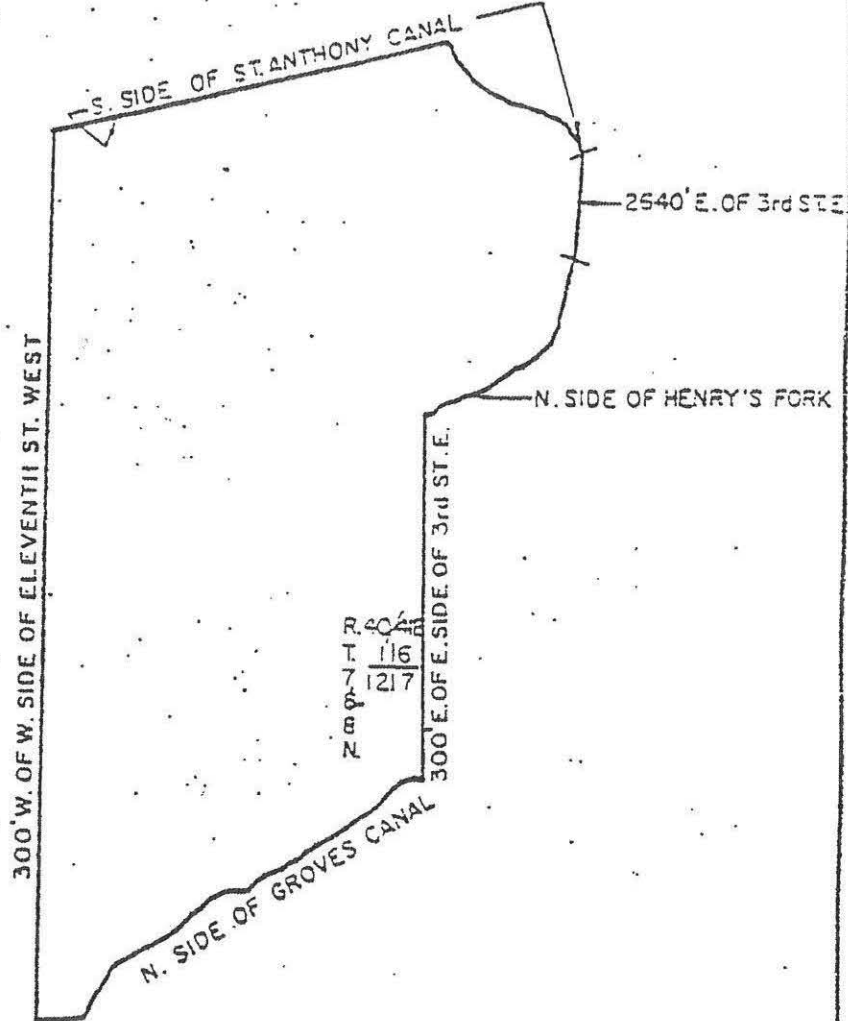
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SCALE IN MILES

IDAHO PUBLIC UTILITIES COMMISSION  
APPROVED EFFECTIVE

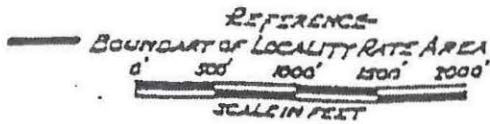
DEC 2 - '96

NOV 15 '96

*Theresa J. Staller* SECRETARY



ST. ANTHONY, IDAHO  
TETCH LOCALITY RATE AREA

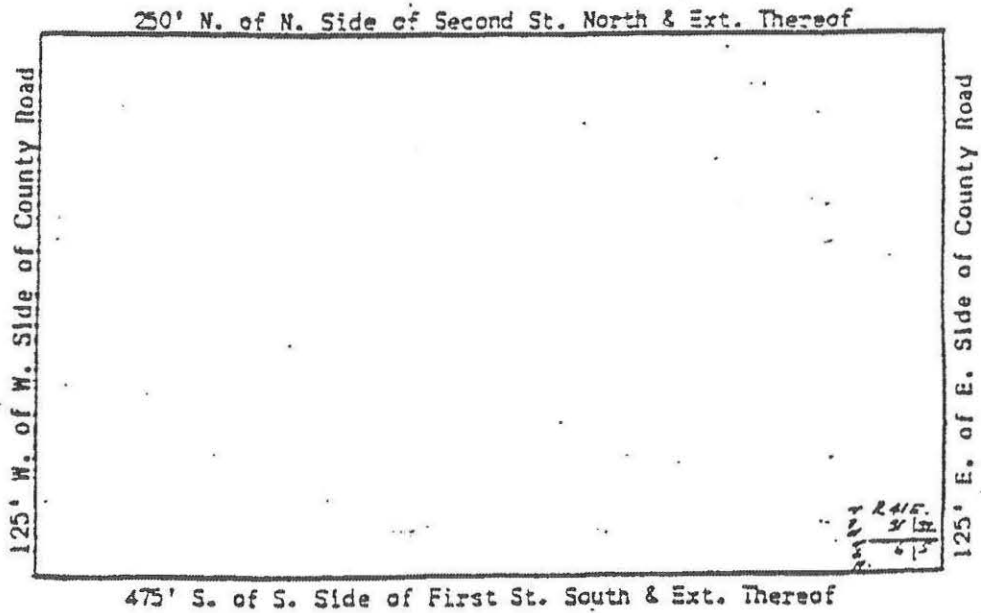


IDAHO PUBLIC UTILITIES COMMISSION  
APPROVED EFFECTIVE

DEC 2 - '96

NOV 15 '96

*Theresa L. Stalder* SECRETARY



Issued:

Effective:

By H. A. Snyder, Vice President and General Manager,  
609 Main Street, Boise, Idaho.